

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

QUINONEZ, ET AL, ) CV-22-3195-WHO  
)  
PLAINTIFFS, ) SAN FRANCISCO, CALIFORNIA  
)  
VS. ) FEBRUARY 26, 2025  
)  
DOES 1 THROUGH 5, ) PAGES 1-28  
)  
DEFENDANTS. )  
)  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS BY ZOOM  
BEFORE THE HONORABLE WILLIAM H. ORRICK  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: INSTITUTE FOR JUSTICE  
901 N. GLEBE ROAD, SUITE 900  
ARLINGTON, VA 22203  
**BY: JABA TSITSUASHVILI**  
**BOBBI TAYLOR**

FOR THE DEFENDANT: UNITED STATES ATTORNEY'S OFFICE  
DEPARTMENT OF JUSTICE  
1301 CLAY STREET, SUITE 340S  
OAKLAND, CA 94612  
**BY: MICHAEL A. KEOUGH**

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY

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TRANSCRIPT PRODUCED WITH COMPUTER

SAN JOSE, CALIFORNIA

FEBRUARY 26, 2025

P R O C E E D I N G S

(COURT CONVENED AT 2:40 P.M.)

THE CLERK: WE WILL GET UNDER WAY THEN IN CASE NUMBER  
22-3195. QUINONEZ V. DOES 1 THROUGH 5.

COUNSEL, IF YOU WOULD PLEASE STATE YOUR APPEARANCE FOR THE  
RECORD.

MR. TSITSUASHVILI: JABA TSITSUASHVILI AND  
BOBBI TAYLOR FROM THE INSTITUTE FOR JUSTICE ON BEHALF OF  
PLAINTIFFS, RENE QUINONEZ AND MOVEMENT, INK, LLC.

MR. KEOUGH: GOOD AFTERNOON, YOUR HONOR.

ASSISTANT U.S. ATTORNEY MICHAEL KEOUGH FOR THE  
UNITED STATES.

THE COURT: GREAT. GOOD AFTERNOON TO YOU BOTH.

SO LET ME TELL YOU HOW I'M LOOKING AT THIS MOTION. AT THE  
END OF THE DAY, IT SEEMS THAT THERE IS NO EVIDENCE THAT THE  
PACKAGES WERE ACTUALLY OPENED.

FROM THE RECORD, FAJARDO, RUIZ AND HODGES ALL TESTIFIED  
THAT THEY DIDN'T OPEN THEM. AGSTER'S DECLARATION I THINK IS  
CONSISTENT, WHILE FAJARDO AND RUIZ USED THE TERM "DETAINED,"  
AND I UNDERSTAND WHY THAT CREATED SOME AMBIGUITY FOR THE  
PLAINTIFFS.

THE KEY FACT FROM EXTRA CHARGE, WHICH I THINK IS MORE  
CONSISTENTLY READ THAN THE WAY THAT THE GOVERNMENT DOES, BUT  
THE KEY FACT IS THAT THERE'S NO EVIDENCE THAT THE PACKAGES WERE

02:41:20 1 OPEN.

02:41:22 2 AND THAT CHART IS CONSISTENT WITH THAT CONCLUSION. THE  
02:41:31 3 PLAINTIFF HAS ALWAYS CLAIMED THAT THE PACKAGES WERE OPENED. MY  
02:41:36 4 PRIOR ORDER DENYING THE MOTION FOR SUMMARY JUDGEMENT DISCUSSED  
02:41:39 5 THE CONTRARY EVIDENCE, AND CONCLUDED AT A BARE MINIMUM THAT  
02:41:46 6 THERE WAS A MATERIAL DISPUTE, BUT THAT WAS NOT EXAMINING ALL OF  
02:41:51 7 THE EVIDENCE THAT IS BEFORE THE COURT, AND DEFENDANT'S MOTION  
02:41:57 8 SHOWS THAT THE PLAINTIFF'S CLAIM LACKS EVIDENCE TO SUPPORT IT.

02:42:00 9 SO I GRANT WITH RESPECT TO THE TRESPASS TO CHATTELS  
02:42:06 10 BECAUSE YOU NEED TO SHOW BOTH THAT THE PACKAGES WERE OPENED AND  
02:42:10 11 SEARCHED. I WOULD ALSO GRANT WITH RESPECT TO THE INTERFERENCE  
02:42:14 12 WITH RESPECT TO ECONOMIC ADVANTAGE, THE ONLY ENTITY THAT WE ARE  
02:42:21 13 CONCERNED WITH AT THIS POINT IS THE MOVEMENT FOR BLACK LIVES.

02:42:26 14 AND THERE WAS -- THERE ARE NO FUTURE ECONOMIC  
02:42:31 15 RELATIONSHIP, NO FUTURE ECONOMIC BENEFIT THAT COULD BE SHOWN,  
02:42:35 16 THERE IS NO CONTRACT, THERE IS NO DEPOSITION TESTIMONY WHICH  
02:42:41 17 WOULD SUPPORT THE PLAINTIFF'S CLAIM.

02:42:47 18 MS. ADAM'S TESTIMONY WAS UNEQUIVOCAL. MR. QUINONEZ'S  
02:42:51 19 PERSONAL BELIEFS AREN'T EVIDENCE AND HIS STATEMENTS ABOUT WHAT  
02:42:55 20 MR. STEEZ SAID, NOT ONLY ARE THEY HEARSAY BUT MR. STEEZ  
02:43:01 21 WOULDN'T HAVE AUTHORITY TO BIND MOVEMENT FOR BLACK LIVES  
02:43:06 22 ANYWAY.

02:43:07 23 SO I THINK THE PLAINTIFF ALSO COULDN'T SHOW AN ACTUAL  
02:43:10 24 DISRUPTION OF A RELATIONSHIP OR ECONOMIC HARM.

02:43:14 25 SO THAT IS THE MOUNTAIN THAT YOU NEED TO CLIMB. AND SO

02:43:23 1 LET ME HEAR FROM THE PLAINTIFFS.

02:43:25 2 MR. TSITSUASHVILI: THANK YOU, YOUR HONOR.

02:43:27 3 SO I'M GOING TO START BY TRYING TO CLIMB THE MOUNTAIN THAT  
02:43:30 4 I THINK IS EASIER FOR ME TO CLIMB, FRANKLY, WHICH IS WITH  
02:43:34 5 RESPECT TO COUNT 3, THE INTERFERENCE CLAIM.

02:43:36 6 THE COURT: GO AHEAD.

02:43:37 7 MR. TSITSUASHVILI: I WOULD LIKE TO PROCEED IN TWO  
02:43:39 8 PARTS, THE FIRST BEING ON THE PROBABILITY OF FUTURE ECONOMIC  
02:43:43 9 BENEFIT PRONG OF THE SORT AND THEN MOVE TO THE ACTUAL  
02:43:46 10 DISRUPTION PRONG OF THE TORT, IF I COULD.

02:43:51 11 SO I WOULD LIKE TO START BY POINTING TO PARAGRAPHS 15  
02:43:55 12 THROUGH 16 OF MR. QUINONEZ'S DECLARATION WHICH ARE UNREFUTED.  
02:43:59 13 HE SAYS, "BEFORE THE GOVERNMENT'S INTERFERENCE WITH THE MASK  
02:43:59 14 ORDERS, I HAD DISCUSSIONS WITH KARISSA LEWIS, FRESCO STEEZ, AND  
02:43:59 15 OTHER M4BL AFFILIATES ABOUT EXPANDING THE SCOPE OF  
02:43:59 16 MOVEMENT INK'S WORK FOR M4BL TO INCLUDE VARIOUS TYPES OF  
02:43:59 17 APPAREL (FROM HOODIES TO ONESIES) GOING FORWARD."

02:44:17 18 HE GOES ON, "THE DISCUSSIONS WITH FRESCO STEEZ WERE  
02:44:17 19 PARTICULARLY PRONOUNCED, WITH THE EXPECTATION ON BOTH SIDES  
02:44:17 20 THAT MOVEMENT INK'S SUCCESS WITH THE MASK ORDERS WOULD LEAD TO  
02:44:31 21 MORE NATIONAL M4BL WORK FOR MOVEMENT INK."

02:44:31 22 SO THOSE STATEMENTS TAKEN TOGETHER, YOUR HONOR, WITH THE  
02:44:34 23 TOTALITY OF THE CIRCUMSTANCES AROUND THIS RELATIONSHIP, WHICH I  
02:44:38 24 WILL GET TO IN A SECOND, I THINK DO SUFFICE TO SHOW A  
02:44:42 25 PROBABILITY OF FUTURE ECONOMIC BENEFIT.

02:44:45 1 NOW I TAKE YOUR HONOR TO BE SAYING THAT THERE MAY BE SOME  
02:44:47 2 TENSION BETWEEN THOSE UNEQUIVOCAL DIRECT STATEMENTS OF  
02:44:52 3 DISCUSSIONS ABOUT FUTURE BUSINESS RELATIONSHIPS, SOME TENSION  
02:44:58 4 WITH THE TESTIMONY OF M4BL. TO THE EXTENT THAT THAT TENSION  
02:45:03 5 EXISTS, YOUR HONOR, THAT IS PRECISELY THE KIND OF ISSUE THAT  
02:45:05 6 NEEDS TO BE TESTED AT TRIAL, BECAUSE ESSENTIALLY WHAT WE ARE  
02:45:09 7 SAYING -- ESSENTIALLY WHAT WE WOULD BE SAYING AT THIS STAGE IS  
02:45:14 8 THAT MR. QUINONEZ IS NOT TO BE BELIEVED WHEN HE SAYS THAT IN  
02:45:18 9 HIS SWORN DECLARATION, RIGHT. THAT'S NOT APPROPRIATE AT THE  
02:45:21 10 SUMMARY JUDGEMENT STAGE.

02:45:22 11 AND I WOULD LIKE TO MAYBE TURN NOW TO THE TOTALITY OF THE  
02:45:26 12 CIRCUMSTANCES UNDER WHICH MR. QUINONEZ SAYS THAT THOSE  
02:45:29 13 DISCUSSIONS WERE HAPPENING.

02:45:31 14 I WILL START BY NOTING THAT THESE WERE DISCUSSIONS WITH AN  
02:45:37 15 EXISTING CUSTOMER, M4BL, THAT HAD JUST PLACED THESE MASK  
02:45:42 16 ORDERS. THE PERSON AT M4BL WHO HAD PLACED THESE MASK ORDERS  
02:45:48 17 WAS KARISSA LEWIS, THE NATIONAL DIRECTOR FOR M4BL AT THAT TIME.  
02:45:54 18 SHE HAD THE AUTHORITY TO CONTINUE PLACING ADDITIONAL ORDERS ON  
02:45:56 19 BEHALF OF M4BL.

02:45:59 20 NOW IF YOU LOOK AT PAGE 75 OF THE BE M4BL DEPOSITION,  
02:46:07 21 YOUR HONOR, YOU WILL SEE THAT FRESCO STEEZ, THAT ACCORDING TO  
02:46:10 22 M4BL, FRESCO STEEZ ACTUALLY ALSO HAD AUTHORITY TO PLACE ORDERS  
02:46:12 23 FOR M4BL BECAUSE THEY SAID THAT IT WAS FRESCO STEEZ THAT PLACED  
02:46:17 24 THE MASK ORDERS FOR TENS OF THOUSANDS OF DOLLARS.

02:46:21 25 NOW AGAIN THERE MAY BE SOME DISPUTE AS TO WHETHER FRESCO

02:46:25 1 STEEZ COULD BUY M4BL FOR SUCH HIGH AMOUNTS IN THE FUTURE, BUT  
02:46:28 2 WHETHER THE AMOUNTS IN THE FUTURE WOULD BE THE SAME AS THE  
02:46:31 3 AMOUNTS THAT WE HAD HERE IS NOT -- DOES NOT DECIDE WHETHER  
02:46:35 4 THERE WAS A PROBABILITY OF SOME FUTURE ECONOMIC BENEFIT.

02:46:38 5 AND AGAIN, MR. QUINONEZ IS SAYING WE WERE TALKING ABOUT  
02:46:40 6 THAT FUTURE ECONOMIC BENEFIT. THERE NEED NOT BE -- THE  
02:46:44 7 CALIFORNIA COURTS ARE UNEQUIVOCAL IN SAYING THAT YOU DON'T NEED  
02:46:49 8 TO SHOW THE EXISTENCE OF A CONTRACT IN ORDER TO MAKE THIS  
02:46:52 9 SHOWING. IN FACT IF YOUR HONOR LOOKS AT THE CASES THAT WE CITE  
02:46:57 10 AT PAGES 12 TO 13, OF OUR BRIEF, THE NORTHERN DISTRICT OF  
02:47:03 11 CALIFORNIA AND CENTRAL DISTRICT OF CALIFORNIA GIVE YOU THE FACT  
02:47:09 12 PATTERNS THAT COURTS REGULARLY SAY SUFFICES TO MEET THIS  
02:47:13 13 ELEMENT OF THIS TORT.

02:47:16 14 FOR EXAMPLE, FROM THE SILICON LABS CASE, SPECIFIC  
02:47:21 15 REFERENCES TO POTENTIAL CUSTOMERS WITH WHICH IT HAD PREVIOUS  
02:47:24 16 SALES RELATIONSHIPS AND WAS ENGAGED IN BUSINESS DISCUSSIONS.  
02:47:27 17 THAT STANDARD MAPS PRECISELY ON TO PARAGRAPHS 15 THROUGH 16 OF  
02:47:33 18 MR. QUINONEZ'S DECLARATION. MOREOVER, BUSINESS DISCUSSION WITH  
02:47:36 19 A PROSPECTIVE CUSTOMER -- OF THE SORT THAT COURTS HAVE  
02:47:40 20 RECOGNIZED CAN FORM GROUNDS FOR AN INTERFERENCE CLAIM, THAT'S  
02:47:44 21 THE POWERTECH CLAIM, AND THAT COLLECTS ADDITIONAL CASES FOR  
02:47:49 22 THAT PROPOSITION.

02:47:50 23 THE COURTS ARE CLEAR TO SAY THAT THERE NEED NOT BE A  
02:47:53 24 FORMED CONTRACT OR A CONCRETE PLAN THAT YOU CAN POINT TO AND  
02:47:57 25 SAY THAT WAS DEFINITELY GOING TO HAPPEN.

02:47:58 1 AND HOW DO WE KNOW THAT? WE KNOW THAT BECAUSE IF  
02:48:01 2 YOUR HONOR LOOKS TO THE EXECUTIVE SECURITIES MANAGEMENT CASE  
02:48:04 3 THAT WE CITE IN OUR BRIEF, THEY SAY THAT THE MERE OPPORTUNITY  
02:48:07 4 TO BID FOR A FUTURE CONTRACT SUFFICES TO MEET THE PROBABILITY  
02:48:12 5 OF FUTURE ECONOMIC BENEFIT PRONG OF THIS TORT, YOUR HONOR.

02:48:17 6 SO THOSE ARE THE CASES THAT WE PRIMARILY RELY ON. I THINK  
02:48:22 7 THE STANDARDS THAT THOSE CASES ANNOUNCE AND THE STANDARDS THAT  
02:48:25 8 THOSE CASES SAY THE CALIFORNIA COURTS FOLLOW, MAP CLEANLY AND  
02:48:29 9 NEATLY ON TO PARAGRAPHS 15 THROUGH 16 AND THE TOTALITY OF THE  
02:48:34 10 CIRCUMSTANCES SURROUNDING THIS SITUATION.

02:48:36 11 BY CONTRAST, THE GOVERNMENT'S PRIMARY CASE THAT IT RELIES  
02:48:40 12 ON WHICH IS THE REPUBLICAN NATIONAL COMMITTEE CASE FROM THE  
02:48:44 13 EASTERN DISTRICT IS NOTHING LIKE THIS CASE. WHAT YOU HAD THERE  
02:48:48 14 WAS THE REPUBLICAN NATIONAL COMMITTEE COMPLAINING THAT ITS MASS  
02:48:53 15 E-MAILS WERE BEING DIVERTED BY GOOGLE TO SPAM FOLDERS, AND THEY  
02:48:58 16 WERE TRYING TO SAY THAT THOSE MASS E-MAILS TO AN INDEFINITE  
02:49:05 17 NUMBER OF PEOPLE THAT THEY DIDN'T HAVE ANY SORT OF RELATIONSHIP  
02:49:08 18 WITH COULD SUFFICE TO SHOW THIS PROBABILITY PRONG.

02:49:11 19 THAT'S NOT THIS CASE, THAT'S NOT REMOTELY LIKE THIS CASE  
02:49:14 20 AND IT'S THE CASE THAT THE GOVERNMENT WANTS THIS COURT TO  
02:49:17 21 ANALOGIZE TO AS AGAINST THE CASES THAT WE CITE FROM PAGES 12 TO  
02:49:23 22 13 OF OUR BRIEF.

02:49:24 23 THE COURT: BEFORE YOU LEAVE THAT, WHAT EVIDENCE IS  
02:49:28 24 IN THE RECORD BESIDES MR. QUINONEZ'S TESTIMONY ABOUT WHAT HE  
02:49:36 25 HOPED FOR AND BELIEVED WAS -- WOULD HAPPEN THAT CREATE THAT



02:49:47 1 PROBABILITY OF ECONOMIC BENEFIT?

02:49:50 2 SO NOT JUST THAT HE'S HAVING DISCUSSIONS, BUT WHO FROM THE  
02:49:57 3 MOVEMENT FOR BLACK LIVES TESTIFIES THAT THEY WERE GOING TO  
02:50:05 4 ENTER INTO SOME SORT OF A SECOND CONTRACT WITH THEM? IS THERE  
02:50:09 5 ANYBODY?

02:50:10 6 MR. TSITSUASHVILI: SO YOUR HONOR, WE HAVE NOT MOVED  
02:50:13 7 FOR SUMMARY JUDGEMENT ON THIS PRONG, SO --

02:50:16 8 THE COURT: I'M JUST ASKING WHAT'S THE SHAPE OF THE  
02:50:21 9 RECORD? WOULD YOU ANSWER MY QUESTION?

02:50:22 10 MR. TSITSUASHVILI: ABSOLUTELY, YOUR HONOR.

02:50:23 11 SO IF YOU LOOK TO M4BL'S TESTIMONY, WHAT THEY TELL US IS A  
02:50:29 12 FEW THINGS. ONE THING THAT THEY TELL US IS THAT KARISSA LEWIS  
02:50:34 13 AND FRESCO STEEZ AND THE PEOPLE THAT MR. QUINONEZ SAYS HE WAS  
02:50:38 14 ENGAGED IN FORWARD-LOOKING DISCUSSIONS WITH, HAD THE AUTHORITY  
02:50:42 15 TO PLACE ORDERS ON BEHALF OF M4BL.

02:50:44 16 ANOTHER THING THAT M4BL'S DEPOSITION TELLS US IS THAT  
02:50:48 17 MOVEMENT INK WAS A VALUES-ALIGNED CUSTOMER WITH -- THAT M4BL  
02:50:56 18 VIEWED AND VIEWS MOVEMENT INK AS A VALUES-ALIGNED CUSTOMER.

02:51:01 19 THEY GO ON TO TELL US IN THAT SAME DEPOSITION THAT THEY  
02:51:04 20 WERE SATISFIED WITH EVERY SINGLE METRIC THAT M4BL CONSIDERS  
02:51:07 21 WHEN DECIDING WHETHER TO DO BUSINESS WITH AN OUTSIDE  
02:51:10 22 CONTRACTOR, BE IT PRICE, BE IT SPEED, BE IT QUALITY OF WORK.

02:51:14 23 AND THEN THEY GO ON TO TELL US THAT IN THAT SUMMER WHEN  
02:51:20 24 THESE CONVERSATIONS THAT MR. QUINONEZ IS SWEARING TO HAPPENED,  
02:51:26 25 M4BL "HAD INCREASES IN M4BL'S NEED FOR SCREEN PRINTED APPAREL,"

02:51:31 1 AND LOTS OF "MOBILIZATIONS" FOR WHICH M4BL ORDERED  
02:51:37 2 SCREEN-PRINTED APPAREL.

02:51:38 3 SO MR. QUINONEZ'S TESTIMONY ABOUT THE DISCUSSIONS THAT  
02:51:40 4 WERE HAPPENING WITH M4BL MEMBERS WHO HAD THE AUTHORITY TO BIND  
02:51:45 5 M4BL, AND WE KNOW THAT THEY DID BECAUSE THEY JUST HAD AND  
02:51:48 6 BECAUSE M4BL SAID THEY COULD, IN A SETTING AND IN A CONTEXT IN  
02:51:54 7 WHICH M4BL IN THAT MOMENT AND IN THE MONTHS AHEAD NEEDED A LOT  
02:51:59 8 OF SCREEN-PRINTED APPAREL.

02:52:01 9 SO I THINK THAT IS THE --

02:52:04 10 THE COURT: SO THE ANSWER TO MY QUESTION IS NO, THERE  
02:52:09 11 IS NOBODY ELSE, YOU DIDN'T GET A DECLARATION OR THERE IS NO  
02:52:15 12 DEPOSITION FROM MR. STEEZ OR MS. LEWIS THAT SAYS WE WERE GOING  
02:52:18 13 TO HAVE A SECOND -- WE WERE TALKING ABOUT A SECOND CONTRACT  
02:52:23 14 THAT WE WERE IMMINENTLY GOING TO ENTER WITH YOU.

02:52:31 15 MR. TSITSUASHVILI: YOUR HONOR, THERE IS NO  
02:52:34 16 DECLARATION OR TESTIMONY FROM THOSE INDIVIDUALS. AND I  
02:52:40 17 THINK --

02:52:40 18 THE COURT: OKAY. YOU DIDN'T ANSWER MY QUESTION.

02:52:41 19 YOU CAN NOW GO ON TO ANY OTHER ARGUMENT YOU WANT TO MAKE  
02:52:44 20 ON THAT, BUT THAT'S WHAT I WANTED TO CLARIFY.

02:52:48 21 MR. TSITSUASHVILI: SURE, YOUR HONOR.

02:52:49 22 IF I COULD JUST ROUND OUT THIS ARGUMENT AND THEN MOVE TO  
02:52:52 23 THE ACTUAL DISRUPTION, I THINK THAT THE KEY HERE, YOUR HONOR,  
02:52:56 24 IS THAT IN ORDER TO FIND AT THE SUMMARY JUDGEMENT STAGE THAT  
02:53:01 25 THERE WAS NO -- THAT THERE COULD BE NO PROBABILITY OF ANY

02:53:05 1 FUTURE ECONOMIC BENEFIT AS BETWEEN THESE PARTIES WHO WERE  
02:53:10 2 ALREADY ENGAGED IN ECONOMIC RELATIONSHIPS, YOUR HONOR WOULD  
02:53:14 3 HAVE TO FIND THAT MR. QUINONEZ'S CREDIBILITY -- FIND THAT  
02:53:20 4 MR. QUINONEZ IS NOT CREDIBLE. IT'S A CREDIBILITY DETERMINATION  
02:53:23 5 THAT WOULD NEED TO BE MADE AT TRIAL, YOUR HONOR, AND THERE IS  
02:53:25 6 NO REASON THAT ADDITIONAL WITNESSES CANNOT TESTIFY AT TRIAL IF  
02:53:28 7 YOUR HONOR SAYS THAT'S NECESSARY.

02:53:30 8 SO THEN I WILL TURN -- IF I COULD NOW TURN TO THE ACTUAL  
02:53:33 9 DISRUPTION PRONG OF THE TORT.

02:53:39 10 SO AGAIN, I SPOT YOU, YOUR HONOR, THAT I AM CONTINUING TO  
02:53:46 11 RELY ON TWO THINGS PRIMARILY, MR. QUINONEZ'S DECLARATION WHICH  
02:53:50 12 HE HAS PERSONAL KNOWLEDGE OF WHICH IS SWORN AND WHICH THERE IS  
02:53:54 13 NO REPUTATION OF, AND THE BACKGROUND CIRCUMSTANCES IN WHICH ALL  
02:53:57 14 OF THIS HAPPENED.

02:53:58 15 SO PARAGRAPHS -- NOW EXPANDING OUT THE PART OF THE  
02:54:02 16 DECLARATION THAT WE ARE LOOKING AT, PARAGRAPHS 15 THROUGH 19 OF  
02:54:06 17 MR. QUINONEZ'S DECLARATION TELL A SIMPLE STORY. THEY SAY THAT  
02:54:10 18 HE WAS ENGAGED IN BUSINESS DISCUSSIONS WITH M4BL  
02:54:15 19 REPRESENTATIVES THAT HAD JUST PLACED THESE ORDERS, WHO HE WAS  
02:54:18 20 WORKING WITH ON A REGULAR BASIS DURING THIS TIME. HE SAYS THE  
02:54:22 21 GOVERNMENT INTERFERED WITH THE EXISTING ORDERS AND THAT THOSE  
02:54:26 22 CUSTOMERS PROCEEDED TO CUT OFF THE DISCUSSIONS THAT WERE  
02:54:29 23 HAPPENING ABOUT FUTURE ORDERS.

02:54:32 24 SO THAT IS ACTUAL DISRUPTION, PLAIN AND SIMPLE,  
02:54:37 25 YOUR HONOR. THE NINTH CIRCUIT IN THE CYBERSOUND CASE SAYS ALL

02:54:39 1 YOU NEED FOR THE ACTUAL DISRUPTION IS A NEGOTIATION WITH A  
02:54:43 2 POTENTIAL CUSTOMER FAILED, RIGHT. THE NEGOTIATION WAS  
02:54:45 3 HAPPENING, THE INTERFERENCE HAPPENED, BOOM, CUT OFF.

02:54:49 4 SO AGAIN, LOOKING TO THE TOTALITY OF THESE CIRCUMSTANCES  
02:54:54 5 HERE, RIGHT, WE HAVE IN PARAGRAPH 18 OF THE DECLARATION, WHAT  
02:54:59 6 AMOUNTS BY FRESCO STEEZ TO A SMOKING GUN THAT SAYS THE REASON  
02:55:04 7 THAT WE ARE CUTTING OFF TIES WITH YOU IS BECAUSE OF THIS  
02:55:07 8 INTERFERENCE.

02:55:09 9 I UNDERSTAND YOUR HONOR TO BE SAYING THAT THAT MAY BE  
02:55:12 10 HEARSAY, BUT I THINK THERE'S TWO THINGS I WANT TO SAY IN  
02:55:16 11 RESPONSE TO THAT.

02:55:18 12 THE FIRST IS THAT WE DON'T NEED THAT SMOKING GUN. SO  
02:55:23 13 LET'S PUT ASIDE FOR A SECOND AND I WILL COME BACK TO WHY I  
02:55:26 14 THINK IT IS APPROPRIATE TO CONSIDER THAT SMOKING GUN TESTIMONY  
02:55:30 15 OR THAT SMOKING GUN POTENTIAL EVIDENCE IN A SECOND, BUT LET'S  
02:55:35 16 PUT IT ASIDE FOR NOW, OKAY.

02:55:37 17 SO I THINK THAT THE ACTUAL DISRUPTION PRONG CAN BE AND IS  
02:55:41 18 MET HERE, OR AT LEAST ENOUGH TO GET TO TRIAL WITHOUT THE  
02:55:45 19 SMOKING GUN STATEMENT. AND THE REASON IS AGAIN YOU HAVE  
02:55:49 20 MR. QUINONEZ SAYING WE ARE ENGAGED IN BUSINESS DISCUSSIONS, THE  
02:55:52 21 INTERFERENCE HAPPENS AND THEN THOSE DISCUSSIONS GET CUT OFF.

02:55:57 22 WELL WHAT DID M4BL TESTIFY WAS HAPPENING BEHIND THE  
02:56:01 23 SCENES? I POINT THE COURT TO FOOTNOTE 5 OF PAGE 15 OF OUR  
02:56:06 24 BRIEF WHERE M4BL'S TESTIMONY SAYS THAT NATIONAL DIRECTOR  
02:56:12 25 KARISSA LEWIS WAS WORKING -- WHO WAS INVOLVED IN THESE

DISCUSSIONS WITH MOVEMENT INK -- SAID SHE WAS WORRIED AND KIND OF SHOCKED THAT THE MASKS HAVE BEEN STOPPED OR SEIZED.

M4BL'S DEPO TESTIMONY GOES ON, THERE WERE MEMBERS OF M4BL WHO WERE CONCERNED ABOUT THE MASKS BEING TAKEN, BEING SEIZED, AND A FEW OF THOSE MEMBERS WERE CONCERNED IF THAT MEANT THAT M4BL WOULD BE FACING MORE SCRUTINY.

THE M4BL DEPO GOES ON, THERE WERE A FEW OTHER MEMBERS WHO WERE CONCERNED ABOUT WHAT THIS MEANT FOR M4BL AND THE WAY THAT M4BL COULD HAVE BEEN SCRUTINIZED.

AND THEN THE M4BL DEPO EXPLAINS THAT M4BL CONSULTED AN ATTORNEY IN THE CONTEXT OF ALL OF THIS WORRY AND SHOCK THAT WAS BEING EXPRESSED BY THE NATIONAL DIRECTOR AND OTHER MEMBERS, AND SUDDENLY NO MORE COMMUNICATION WITH MOVEMENT INK

SO AGAIN, WE DON'T NEED THAT SMOKING GUN TESTIMONY TO SHOW THAT THERE WAS -- TO SHOW THAT THERE IS AN INFERENCE HERE, AGAIN ESPECIALLY VIEWING EVERYTHING IN THE LIGHT MOST FAVORABLE TO US AT THIS STAGE AS THE NON-MOVEMENT ON SUMMARY JUDGEMENT, THAT THERE WAS ACTUAL DISRUPTION OF A DISCUSSION HERE AND THAT THE REASON FOR THAT DISRUPTION WAS THE SHOCK AND DISMAY THAT M4BL'S MEMBERS, INCLUDING ITS NATIONAL DIRECTOR WERE EXPRESSING AND THAT LEAD THEM TO GO CONSULT AN ATTORNEY AND THEN SUDDENLY CUT OFF ALL TIES WITH MOVEMENT INK

SO IN LIGHT OF ALL OF THOSE CIRCUMSTANCES, AS MEASURED AGAINST AGAIN WHAT MOVEMENT -- WHAT M4BL WAS SAYING ABOUT THE QUALITY OF MOVEMENT INK'S WORK AND WHETHER THEY COULD IDENTIFY

02:57:56 1 ANY OTHER REASONS WHY THEY MAY HAVE CUT OFF THESE TIES, I THINK  
02:58:00 2 THAT MORE THAN SUFFICES TO MEET THE ACTUAL DISRUPTION PRONG OF  
02:58:05 3 THE TORT, YOUR HONOR.

02:58:07 4 NOW AGAIN, TURNING BACK TO YOUR HONOR'S EXPRESS CONCERN  
02:58:12 5 ABOUT, WELL, THE SMOKING GUN HERE BY FRESCO STEEZ SAYING THAT  
02:58:17 6 WAS INDEED THE REASON IS HEARSAY --

02:58:21 7 THE COURT: IT'S NOT JUST THAT, THAT STATEMENT, IT'S  
02:58:25 8 DO YOU THINK ANY OF THE STATEMENTS IN THE DECLARATION THAT  
02:58:32 9 MR. QUINONEZ ATTRIBUTES TO HAVING BEEN MADE BY THIRD PARTIES  
02:58:38 10 COULD COME INTO EVIDENCE?

02:58:46 11 MR. TSITSUASHVILI: SO YOUR HONOR, TWO POINTS.

02:58:48 12 THE FIRST IS PARAGRAPHS 15 AND 16 WHICH I WAS RELYING ON  
02:58:51 13 FOR THE PROBABILITY PRONG.

02:58:52 14 AGAIN IN THE -- IN ADDITION TO THE TOTALITY OF  
02:58:55 15 CIRCUMSTANCES IN WHICH THEY ARE MADE, THERE IS NO HEARSAY IN  
02:58:57 16 THOSE PARAGRAPHS. THE FACT THAT THESE DISCUSSIONS HAPPENED IS  
02:59:02 17 NOT -- THERE IS NO OUT-OF-COURT STATEMENT THAT MR. QUINONEZ IS  
02:59:05 18 SAYING KARISSA LEWIS OR FRESCO STEEZ HAS MADE IN THOSE  
02:59:10 19 PARAGRAPHS. HE'S SAYING THAT THE DISCUSSIONS HAPPENED AND THAT  
02:59:14 20 THEY WERE ABOUT BUSINESS AND THEY WERE ABOUT ONGOING BUSINESS  
02:59:16 21 BETWEEN THESE TWO ENTITIES.

02:59:18 22 SO THERE IS NO HEARSAY IN THAT THAT WE ARE OFFERING FOR  
02:59:22 23 THE TRUTH OF THE MATTER BECAUSE THERE IS NO STATEMENT IN THE  
02:59:25 24 FIRST PLACE BY THOSE OUTSIDE ENTITIES.

02:59:27 25 NOW THAT BEING SAID, THE SUPREME COURT AND THE

02:59:30 1 NINTH CIRCUIT ARE CLEAR THAT AT THE SUMMARY JUDGEMENT STAGE --  
02:59:33 2 SO THIS IS NOT IN OUR BRIEFING, ADMITTEDLY, BECAUSE THE  
02:59:36 3 GOVERNMENT MADE THIS HEARSAY ARGUMENT IN ITS REPLY BRIEF, BUT  
02:59:39 4 THE SUPREME COURT -- AND I'M HAPPY TO SUBMIT A SUPPLEMENT IF  
02:59:43 5 YOUR HONOR WANTS, BUT THEY SAY THAT AT THE SUMMARY JUDGEMENT  
02:59:46 6 STAGE, YOU DON'T NEED TO PRESENT EVIDENCE IN AN ADMISSIBLE  
02:59:50 7 FORM.

02:59:51 8 IF THAT WERE THE CASE, THE DECLARATIONS THEMSELVES AND THE  
02:59:54 9 DEPO TESTIMONY THEMSELVES CANNOT BE CONSIDERED IN AN MSJ,  
02:59:58 10 RIGHT, BECAUSE THOSE ARE OUT-OF-COURT STATEMENTS.

03:00:01 11 SO WHAT THEY MAKE CLEAR IS THAT YOU CAN PRESENT, EVEN  
03:00:03 12 HEARSAY, AT THE SUMMARY JUDGEMENT STAGE IF AT TRIAL WHAT YOU  
03:00:08 13 ARE SAYING COULD BE REDUCED TO AN ADMISSIBLE FORM. THAT'S THE  
03:00:12 14 RULE.

03:00:13 15 SO EVEN IF THE COURT SAYS THAT AT TRIAL WE WOULD NEED TO  
03:00:16 16 BRING THOSE FOLKS IN IN ORDER TO TESTIFY AS TO THE STATEMENTS,  
03:00:21 17 THAT DOES NOT PRECLUDE US BEATING SUMMARY JUDGEMENT AT THIS  
03:00:25 18 STAGE.

03:00:27 19 AND THE OTHER POINT THAT I WANT TO MAKE, YOUR HONOR, WITH  
03:00:30 20 RESPECT TO WHAT'S IN THOSE PARAGRAPHS, THIS IS MR. QUINONEZ  
03:00:38 21 TESTIFYING BASED ON HIS PERSONAL EXPERIENCE, HIS PERSONAL  
03:00:41 22 KNOWLEDGE, FIRSTHAND DIRECT KNOWLEDGE OF WHAT THOSE  
03:00:44 23 CONVERSATIONS WERE ABOUT, RIGHT.

03:00:47 24 SO AGAIN, THAT UNEQUIVOCAL, DIRECT AND FRANKLY UNREFUTED  
03:00:53 25 TESTIMONY, IN ORDER TO DISCOUNT IT, ESPECIALLY AS AGAINST ALL

03:00:56 1 THE BACKGROUND CIRCUMSTANCES, WOULD BE TO MAKE A CREDIBILITY  
03:00:59 2 DETERMINATION ABOUT WHAT MR. QUINONEZ IS SAYING, WHICH IS  
03:01:03 3 IMPROPER AT THIS STAGE.

03:01:04 4 AND I THINK THAT THE -- I THINK THE FINAL POINT I MAY WANT  
03:01:08 5 TO MAKE ON THIS IS THAT TO THE EXTENT YOUR HONOR FINDS THAT  
03:01:15 6 THERE MAY BE SOME -- AGAIN, I THINK THEY ARE UNREFUTED  
03:01:20 7 STATEMENTS, BUT IF THERE'S SOME TENSION WITH WHAT M4BL SAID IN  
03:01:23 8 ITS DEPOSITION, THAT TENSION MUST BE TESTED AT TRIAL,  
03:01:26 9 YOUR HONOR.

03:01:29 10 IF YOUR HONOR HAS ANY FURTHER QUESTIONS OR INQUIRIES --

03:01:33 11 THE COURT: GO AHEAD ON TO TRESPASS TO CHATTELS.

03:01:38 12 MR. TSITSUASHVILI: SURE.

03:01:40 13 SO AS THE COURT RECOGNIZED, YOU PREVIOUSLY HELD THAT THERE  
03:01:43 14 ARE DISPUTES OF MATERIAL FACT THAT EXIST OVER WHETHER USPIS  
03:01:49 15 OFFICERS OPENED PLAINTIFF'S PACKAGES WHILE THEY WERE DETAINED.  
03:01:52 16 THAT'S THE END OF THE QUOTE FROM THIS COURT'S PRIOR ORDER.

03:01:55 17 NOW THAT IS OBVIOUSLY THE VERY SAME FACT THAT'S BEFORE THE  
03:01:59 18 COURT AGAIN. THE CASES ON PAGE 8 OF OUR BRIEF SAY THAT IN THIS  
03:02:03 19 CIRCUMSTANCE WHERE YOU HAVE ALREADY SAID THAT THERE IS A  
03:02:06 20 DISPUTE OF A MATERIAL FACT, SUMMARY JUDGEMENT IS APPROPRIATE.  
03:02:09 21 THAT'S THE MOORE, DF AND THE WEBB CASES.

03:02:13 22 NOW THE GOVERNMENT WANTS THIS COURT TO REVERSE COURSE ON  
03:02:16 23 THAT. AND THE WAY THEY WANT THIS COURT TO REVERSE COURSE IS BY  
03:02:19 24 WEIGHING EVIDENCE.

03:02:21 25 AND I WOULD LIKE TO EXPLAIN WHY, WHY THE WAY THAT THEY



03:02:25 1 WANT THIS COURT TO REVERSE COURSE AND RESOLVE THIS IN THEIR  
03:02:28 2 FAVOR IS BY DOING A WEIGHING OF THE EVIDENCE, WHICH AGAIN IS  
03:02:30 3 INAPPROPRIATE AT THE SUMMARY JUDGEMENT STAGE.

03:02:35 4 RUIZ AND FAJARDO, WHO HANDLED THESE PACKAGES, TESTIFIED  
03:02:40 5 THAT THE PACKAGES WERE "DETAINED," ALL OF THESE PACKAGES'  
03:02:46 6 PARCEL DETAIL WORKSHEETS ALSO REFER TO THESE PACKAGES AS  
03:02:49 7 "DETAINED."

03:02:50 8 NOW WITHIN USPS, THOSE DEPOSITIONS REVEALED THAT  
03:02:53 9 "DETAINED" IS A TERM OF ART, AND IT MEANS THAT THE PACKAGES  
03:02:56 10 WENT BEYOND JUST BEING ASSESSED AND THAT THEY WERE PUT IN A  
03:02:59 11 PARTICULAR ROOM TO GO THROUGH PARTICULAR PROCEDURES WITHIN THE  
03:03:03 12 NP PROCESS.

03:03:04 13 NOW HERE'S THE KICKER, EVERY SINGLE ONE OF THE PACKAGES IN  
03:03:08 14 2020, EVERY SINGLE ONE OF THE 50,832 THAT WERE DETAINED, WERE  
03:03:16 15 OPENED. AND THAT'S FROM THE GOVERNMENT'S OWN EVIDENCE.

03:03:19 16 SO THAT'S ON OUR SIDE OF THE LEDGER, RIGHT? IT'S A PRETTY  
03:03:23 17 SIMPLE SYLLOGISM. THESE PACKAGES WERE DETAINED, THE GOVERNMENT  
03:03:26 18 SAYS EVERY SINGLE PACKAGE THAT WAS DETAINED WAS OPENED, THESE  
03:03:29 19 PACKAGES MUST HAVE BEEN OPENED.

03:03:31 20 NOW ON THE OTHER SIDE, AND THIS IS THE EVIDENCE THAT THE  
03:03:33 21 GOVERNMENT NOW WANTS YOU TO WEIGH AGAINST THAT SIDE OF THE  
03:03:36 22 LEDGER, RIGHT, FROM THAT CHART, WHICH IS THAT THESE PACKAGES  
03:03:41 23 SHOULD ACTUALLY BE DEEMED TO FALL INTO A MUTUALLY EXCLUSIVE  
03:03:45 24 CATEGORY OF THE SAME CHART.

03:03:47 25 THEY WANT THE COURT TO SAY THAT THESE PACKAGES ARE

03:03:52 1 ACTUALLY IN A CATEGORY OF PACKAGES OR PARCELS ASSESSED AND  
03:03:57 2 RETURNED TO THE MAIL STREAM WITHOUT BEING DETAINED.

03:04:00 3 THOSE ARE LOGICALLY INCONSISTENT PARTS OF THE SAME CHART,  
03:04:04 4 YOUR HONOR, AND THAT'S WHERE THE WEIGHING OF THIS EVIDENCE  
03:04:07 5 COMES IN.

03:04:08 6 SO AGAIN, IT CAN'T BE THE CASE THAT THIS IS -- THIS CAN BE  
03:04:12 7 DECIDED ON SUMMARY JUDGEMENT, IT NEEDS TO BE DECIDED AT TRIAL.

03:04:17 8 I THINK THE FINAL POINT THAT I WILL MAKE ON THAT IS THAT  
03:04:20 9 EVEN OF THE "WITHOUT BEING DETAINED" CATEGORY THAT THE  
03:04:23 10 GOVERNMENT NOW WANTS THE COURT TO SAY THESE PACKAGES FALL IN  
03:04:26 11 EVEN THOUGH EVERYBODY HAS ALWAYS SAID THEY WERE IN THE  
03:04:29 12 "DETAINED" CATEGORY, OVER 99 PERCENT OF THOSE PACKAGES WERE  
03:04:32 13 OPENED TOO.

03:04:34 14 SO THESE ARE THE KINDS OF WEIGHING OF EVIDENCE AND  
03:04:36 15 CREDIBILITY DETERMINATIONS THAT MUST BE TESTED AT TRIAL.

03:04:40 16 IF YOUR HONOR HAS ANY FURTHER QUESTIONS ON THIS OR FRANKLY  
03:04:43 17 ON COUNT 3 STILL, I WILL GLADLY ANSWER THEM.

03:04:46 18 THANK YOU.

03:04:46 19 MR. KEOUGH.

03:04:48 20 MR. KEOUGH: THANK YOU, YOUR HONOR. I WILL JUST  
03:04:49 21 BRIEFLY RESPOND TO A FEW POINTS.

03:04:52 22 OF COURSE WE BELIEVE YOUR HONOR'S REASONING IS SOUND, SO  
03:04:55 23 WE WON'T BELABOR IT, BUT THERE ARE SERIOUS 602 AND 803 ISSUES  
03:05:00 24 WITH MR. QUINONEZ'S DECLARATION, AS YOUR HONOR POINTS OUT, AND  
03:05:03 25 IT IS TRUE THAT YOU DO NOT NEED ALL EVIDENCE TO BE ADMISSIBLE

AT THE SUMMARY JUDGEMENT STAGE BUT IT MUST BE ADMISSIBLE AT  
SOME POINT AT TRIAL.

AND MR. QUINONEZ WILL NEVER BE COMPETENT TO TESTIFY AS TO  
THE BELIEFS AND INTENTIONS OF MOVEMENT FOR BLACK LIVES, NOR  
HAVE THEY IDENTIFIED ANY HEARSAY EXCEPTION TO RULE 803 THAT  
WOULD ALLOW THEM TO HAVE MR. QUINONEZ TESTIFY AS TO A STATEMENT  
BY FRESCO STEEZ OR ANYONE ELSE ON THOSE POINTS.

THOSE ARE THINGS THAT THEY HAVE TO ADDRESS AND THEY ARE  
NOT ABLE TO. ALL WE HAVE IS THE UNEQUIVOCAL TESTIMONY OF  
MOVEMENT FOR BLACK LIVES.

AS YOUR HONOR POINTS OUT, IT IS THE ONLY TESTIMONY IN THE  
RECORD BEFORE THE COURT IN DECIDING THIS MOTION. MOVEMENT FOR  
BLACK LIVES IS CLEAR, THEY HAD NO INTENTION TO ENGAGE IN FUTURE  
ORDERS, THEY HAD NO INTENTION PRIOR TO THE OFFENSES THAT ARE  
ALLEGED TO HAVE OCCURRED INVOLVING THE GOVERNMENT IN THIS CASE,  
AND THEY, EVEN TO CLARIFY SOME OF THE TESTIMONY THAT WAS CITED  
BY PLAINTIFF, WHEN THEY WERE ASKED WHETHER OR NOT THEY BELIEVED  
THAT DOING BUSINESS WITH MOVEMENT FOR BLACK LIVES -- WHEN  
MOVEMENT FOR BLACK LIVES WAS ASKED WHETHER OR NOT DOING FURTHER  
BUSINESS WITH MOVEMENT INK WOULD LEAD TO FURTHER POLICE  
SCRUTINY, THEY SAID THAT NO, NO ONE WAS CONCERNED THAT THAT  
WOULD BE THE CASE, ASIDE FROM ANY GENERAL CONCERN ABOUT POLICE  
SCRUTINY THAT THEY MIGHT HAVE HAD AS A RESULT.

I WANT TO CLARIFY ONE OTHER POINT FROM THE DEPOSITION  
TESTIMONY THAT WAS MISCHARACTERIZED BY PLAINTIFF'S COUNSEL. ON

03:06:20 1 PAGE 75 THERE WAS A STATEMENT THIS TESTIMONY REFLECTS THAT  
03:06:24 2 FRESCO STEEZ HAD THE AUTHORITY TO ENTER INTO CONTRACTS ON  
03:06:27 3 BEHALF OF MOVEMENT FOR BLACK LIVES, AND I WOULD REFER THE COURT  
03:06:31 4 TO THAT PAGE 75 WHICH INDICATES THAT FRESCO STEEZ MAY HAVE BEEN  
03:06:35 5 THE PERSON WHO INITIATED THE RELATIONSHIP WITH MOVEMENT INK,  
03:06:39 6 AND THAT'S OF COURSE A VERY DIFFERENT THING THAN HAVING THE  
03:06:42 7 POWER TO ENTER INTO A CONTRACT.

03:06:44 8 THE LAST POINT I WILL JUST SAY ON COUNT 3 IS TO THE EXTENT  
03:06:47 9 THAT YOUR HONOR LOOKS AT THE CASES CITED BY PLAINTIFFS, WE  
03:06:50 10 WOULD REFER YOU TO THE CONSUMER DIRECT CASE WHERE THEY HAD  
03:06:53 11 TESTIMONY FROM INDIVIDUALS ON BOTH SIDES OF THAT CONTRACT.

03:06:55 12 AND THAT'S THE THING THAT'S MISSING HERE. THE ONLY  
03:06:58 13 ADMISSIBLE EVIDENCE WE HAVE ABOUT THE INTENTION OF MOVEMENT FOR  
03:07:01 14 BLACK LIVES IS OF COURSE THEIR OWN STATEMENTS, AND THEY  
03:07:03 15 COULDN'T BE CLEARER AS TO WHETHER OR NOT THEY HAD ANY INTENT TO  
03:07:07 16 ENGAGE IN BUSINESS WITH MOVEMENT INK.

03:07:09 17 BRIEFLY ON COUNT ONE, I THINK WE HAVE HEARD TODAY THAT  
03:07:13 18 THERE IS NO EVIDENCE THAT THE PARCELS WERE OPENED, ALL WE HAVE  
03:07:16 19 IS THIS INTERROGATORY RESPONSE. THE INTERROGATORY RESPONSE IS  
03:07:19 20 CLEAR ON ITS FACE, AND AS EXPLAINED BY JEFF AGSTER, WHO  
03:07:25 21 PREPARED IT, THAT IT DOES NOT INDICATE THAT THE PARCELS WERE  
03:07:26 22 OPEN.

03:07:26 23 AND OF COURSE AS MR. AGSTER EXPLAINED IN HIS DECLARATION,  
03:07:29 24 THAT DATA IS DRAWN FROM THE PARCEL DETAIL WORKSHEETS. IT CAN  
03:07:32 25 NOT SAY ANYTHING DIFFERENT THAN THE PARCEL DETAIL WORKSHEETS

03:07:32 1 BECAUSE THAT'S WHERE THE DATA CAME FROM.

03:07:35 2 AND IF YOUR HONOR LOOKS AT DOCKET 119-4, PAGES 81 TO 84,  
03:07:39 3 THE WORKSHEETS ARE RIGHT THERE, YOUR HONOR CAN SEE FOR YOURSELF  
03:07:42 4 IT SAYS THAT THEY WEREN'T OPENED. THEY CAN'T SAY ANYTHING  
03:07:45 5 DIFFERENT. THERE IS NO EVIDENCE THAT THESE PARCELS WERE  
03:07:47 6 OPENED.

03:07:48 7 THE COURT: LAST WORDS.

03:07:50 8 MR. TSITSUASHVILI: SURE. THANK YOU.

03:07:52 9 SO I THINK I HAVE THREE OR FOUR POINTS, YOUR HONOR, IF I  
03:07:55 10 MAY.

03:07:55 11 THE FIRST IS THE GOVERNMENT MAKES A POINT ABOUT HEARSAY  
03:08:00 12 AND COMPETENT TO TESTIFY.

03:08:02 13 SO AGAIN, I THINK IT'S CLEAR TO NOTE WHAT THE RULE IS WITH  
03:08:05 14 RESPECT TO HEARSAY. THE QUESTION IS NOT NECESSARILY WHETHER --  
03:08:10 15 LET'S PUT ASIDE WHETHER WE THINK MR. QUINONEZ COULD COMPETENTLY  
03:08:14 16 TESTIFY TO THE EXISTENCE OF THESE DISCUSSIONS, BECAUSE I THINK  
03:08:17 17 HE COULD --

03:08:18 18 THE COURT: NO, LET'S BE CLEAR ABOUT THIS. HE IS  
03:08:21 19 ABLE TO TESTIFY THAT HE HAD DISCUSSIONS. HE CAN TESTIFY IN HIS  
03:08:26 20 MIND THINGS WERE GOING TO BE GREAT AND THEY WERE -- THAT HE WAS  
03:08:30 21 GOING TO HAVE CONTRACTS FOR TIME AND MEMORIAL, IF HE WANTS TO,  
03:08:36 22 THAT'S WHAT HE CAN DO. HE CAN'T TESTIFY TO WHAT OTHER PEOPLE  
03:08:42 23 SAID.

03:08:42 24 YOU HAVE NOT PROVIDED ANY REASON TO BELIEVE THAT OTHER  
03:08:50 25 PEOPLE ARE GONNA SAY SOMETHING DIFFERENT. I MEAN, IF YOU

03:08:54 1 WANTED TO GET THEM, YOU COULD HAVE GOTTEN THEM THROUGH  
03:08:58 2 DEPOSITION OR OTHERWISE, AND INSTEAD YOU HAVE THE DEPOSITION OF  
03:09:05 3 MS. ADAMS WHICH IS UNEQUIVOCAL.

03:09:10 4 MR. TSITSUASHVILI: YOUR HONOR, TWO POINTS.

03:09:15 5 THE FIRST IS THAT LET'S START WITH THE DEPOSITION OF  
03:09:18 6 MS. ADAMS. MS. ADAMS ALSO TESTIFIED THAT SHE DIDN'T TALK TO  
03:09:25 7 KARISSA LEWIS OR FRESCO STEEZ ABOUT WHAT HAPPENED DURING THAT  
03:09:28 8 TIME PERIOD.

03:09:29 9 SO AGAIN, I UNDERSTAND THAT SHE WAS TESTIFYING AS THE  
03:09:32 10 30(B)(6) DESIGNEE, BUT SHE ALSO TESTIFIED THAT THERE WAS NO --  
03:09:37 11 THAT SHE DID NOT KNOW WHAT WAS GOING ON THEN. THE PEOPLE WHO  
03:09:42 12 KNEW, ACCORDING TO THIS DECLARATION, WERE MR. QUINONEZ, KARISSA  
03:09:46 13 LEWIS AND FRESCO STEEZ.

03:09:48 14 AND AGAIN -- AND IT'S ALSO IMPORTANT TO KNOW WHAT THE  
03:09:52 15 LEGAL STANDARD IS WITH RESPECT TO EVEN TAKING INTO ACCOUNT WHAT  
03:09:56 16 M4BL TESTIFIED. THE FACT THAT -- THEY SAID THERE MAY NOT HAVE  
03:10:02 17 BEEN A CONCRETE PLAN TO NECESSARILY ORDER X AMOUNT OF THINGS ON  
03:10:06 18 X AMOUNT OF DATE. THAT'S NOT REQUIRED UNDER THIS TORT,  
03:10:09 19 YOUR HONOR.

03:10:10 20 AND IT'S ALSO IMPORTANT TO NOTE THAT THAT'S NOT THE WAY  
03:10:13 21 THAT THESE ENTITIES DID BUSINESS. THE REASON WE KNOW THAT'S  
03:10:16 22 NOT THE WAY WE KNOW THESE ENTITIES DID BUSINESS IS BASED ON THE  
03:10:20 23 WAY THAT THEY DID BUSINESS WITH RESPECT TO THESE MASK ORDERS.

03:10:23 24 THERE IS NOT LIKE A PROCESS WHERE YOU GET A WRITTEN  
03:10:26 25 CONTRACT FIRST AND THEN THE ORDERS COULD GET GOING. THE WAY

03:10:31 1 THAT THIS RELATIONSHIP WORKED AND THE WAY THAT THESE PARTIES  
03:10:34 2 DID BUSINESS WAS THAT KARISSA LEWIS CAME TO MOVEMENT INK AND  
03:10:39 3 SAID WE NEED THESE MASKS. NONE OF THIS WAS PUT INTO A CONTRACT  
03:10:43 4 AND FORMALIZED. SO THE MASKS HAD ALREADY BEEN BEING MADE FOR  
03:10:47 5 SEVERAL DAYS, OR FRANKLY MAYBE EVEN A LITTLE BIT LONGER THAN  
03:10:51 6 THAT. SO THESE PARTIES DID NOT DO BUSINESS THE WAY THAT WE  
03:10:55 7 MIGHT THINK IS TYPICALLY DONE WHERE YOU FORMALIZE IT IN A  
03:10:58 8 WRITING FIRST AND THEN YOU GET TO WORK, IT WAS ACTUALLY THE  
03:11:01 9 OTHER WAY AROUND. SO I THINK IT'S IMPORTANT TO NOTE THAT  
03:11:05 10 BACKGROUND CIRCUMSTANCE AS WELL.

03:11:07 11 TO THE EXTENT WE ARE TALKING ABOUT WHAT MR. QUINONEZ IS OR  
03:11:10 12 IS NOT COMPETENT TO TESTIFY TO AT TRIAL, THE RULE IS THAT, AND  
03:11:16 13 I'M QUOTING HERE FROM THE CELEBREX CASE, THE SUPREME COURT IN  
03:11:22 14 1986 TALKING ABOUT THE SUMMARY JUDGEMENT STANDARDS, WE DO NOT  
03:11:24 15 MEAN THAT THE NON-MOVING PARTY MUST PRODUCE EVIDENCE IN A FORUM  
03:11:28 16 THAT WOULD BE ADMISSIBLE AT TRIAL IN ORDER TO AVOID SUMMARY  
03:11:30 17 JUDGEMENT. OBVIOUSLY RULE 56 DOES NOT REQUIRE THE NON-MOVING  
03:11:35 18 PARTY TO DEPOSE HER OWN WITNESSES.

03:11:38 19 SO TO THE EXTENT THE COURT IS SAYING THAT WE WERE REQUIRED  
03:11:41 20 TO DEPOSE -- KARISSA LEWIS AND FRESCO STEEZ, THEY ARE ON OUR  
03:11:47 21 WITNESS LIST, OKAY, SO TO THE EXTENT THE IMPLICATION IS WE WERE  
03:11:50 22 REQUIRED TO DEPOSE THEM AND HAVE THEIR DECLARATIONS IN THE  
03:11:53 23 RECORD NOW, THE SUPREME COURT SAYS QUITE THE OPPOSITE.

03:11:55 24 AND AGAIN, THE NINTH CIRCUIT SAYS THAT IT IS NOT  
03:11:58 25 CONTROLLING IN THE SUMMARY JUDGEMENT PHASE THAT THE EVIDENCE

1 WAS HEARSAY, SO LONG AS THE EVIDENCE COULD BE PRESENTED IN AN  
2 ADMISSIBLE FORM AT TRIAL.

3 THAT'S FRASER V. GOODALE, 342 F.3D, 1032, 1037  
4 NINTH CIRCUIT 2003, BEING CITED BY SINGLETON V. LOPEZ, 577 FED.  
5 APP. 733, 736 NINTH CIRCUIT 2014.

6 SO I THINK THE POINT HERE, YOUR HONOR, IS THAT WE ARE THE  
7 NON-MOVING PARTY HERE, WE ARE NOT REQUIRED TO AFFIRMATIVELY  
8 SHOW THAT WE WIN AT THE SUMMARY JUDGEMENT STAGE, WHAT WE ARE  
9 AFFIRMATIVELY REQUIRED TO SHOW IS THAT A RATIONAL FINDER OF  
10 FACT, I UNDERSTAND THAT'S GOING TO BE YOUR HONOR IN THIS CASE,  
11 I'M SENSITIVE TO THAT, BUT I THINK THAT A RATIONAL FINDER OF  
12 FACT, A RATIONAL TRIER OF FACT COULD, UNDER THIS UNREFUTED  
13 TESTIMONY ABOUT THE PERSON WHO ACTUALLY DID KNOW WHAT WAS GOING  
14 ON, AS OPPOSED TO A STATEMENT BY SOMEONE WHO AGAIN ENTITY  
15 DESIGNEE, BUT STILL SAID I DON'T KNOW WHAT WAS HAPPENING WITH  
16 THEM, COULD BE ENOUGH UNDER THE TOTALITY OF THESE  
17 CIRCUMSTANCES, TAKING INTO ACCOUNT THE WAY THESE PARTIES DID  
18 BUSINESS --

19 THE COURT: I HEAR YOU. AND YOU'VE MADE THIS POINT.  
20 SO I APPRECIATE THE VIGOR THAT YOU ARE MAKING IT, BUT MOVE ON  
21 TO ANYTHING ELSE THAT YOU WANT TO.

22 MR. TSITSUASHVILI: SURE.

23 THE GOVERNMENT POINTS OUT THAT THERE MAY BE SOME DISPUTE  
24 AS TO FRESCO STEEZ'S AUTHORITY AT THAT TIME.

25 WELL KARISSA LEWIS WAS THE NATIONAL DIRECTOR OF M4BL AT



03:13:38 1 THAT TIME. KARISSA LEWIS COULD PLACE FUTURE ORDERS WITH  
03:13:42 2 MOVEMENT INK, THAT'S UNDISPUTED. AND SO KARISSA LEWIS WAS  
03:13:49 3 AMONG THE PEOPLE WHO MR. QUINONEZ SAYS WAS INVOLVED IN FUTURE  
03:13:51 4 CONVERSATIONS.

03:13:52 5 SO AGAIN, IF YOU TAKE ALL OF THESE, THIS TOTALITY, AND YOU  
03:13:56 6 EVEN TAKE THE FRESCO STEEZ KIND OF ELEMENT OUT OF IT, THAT  
03:14:01 7 DOESN'T MEAN THAT THE GOVERNMENT HAS MET ITS SUMMARY JUDGEMENT  
03:14:03 8 BURDEN.

03:14:04 9 AGAIN, VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO  
03:14:09 10 US AND RECOGNIZING THAT WE NEED NOT SHOW THAT THERE WAS A  
03:14:12 11 CONTRACT THAT WAS NECESSARILY FORMED, WE ALSO DON'T NEED TO  
03:14:16 12 SHOW THAT THE PROBABILITY OF FUTURE ECONOMIC BENEFIT WAS OF THE  
03:14:20 13 SAME KIND OF EXTENT OR GRADE OR VALUE AS THESE MASK ORDERS; NO,  
03:14:25 14 WE JUST NEED TO SHOW THAT THERE WAS A PROBABILITY OF SOME  
03:14:29 15 FUTURE ECONOMIC BENEFIT IN THIS SUMMER WHERE M4BL SAID WE HAVE  
03:14:35 16 LOTS OF MOBILIZATION WHERE WE NEED SCREEN-PRINTED APPAREL.

03:14:39 17 SO WITH THAT, YOUR HONOR, I DON'T WANT TO ANNOY YOU BUT IF  
03:14:43 18 THERE'S ANYTHING ELSE THAT YOU THINK I COULD DO TO ADVANCE MY  
03:14:46 19 CASE, I WILL --

03:14:47 20 THE COURT: FEEL FREE TO ANNOY ME, IT'S OKAY. AND I  
03:14:51 21 APPRECIATE YOUR ARGUMENT. I DO THINK YOU'VE PROBABLY SAID --  
03:14:55 22 IF YOU HAVE SOMETHING NEW TO SAY OR SOMETHING THAT IS DIRECT  
03:15:01 23 ABOUT WHAT MR. KEOUGH SAID, PLEASE DO THAT, AND OTHERWISE I  
03:15:04 24 WILL LOOK AT THIS ONE MORE TIME WHEN I GET OFF THE BENCH.

03:15:08 25 MR. TSITSUASHVILI: THANK YOU, YOUR HONOR. I

03:15:08 1 APPRECIATE THAT.

03:15:09 2 I THINK TWO POINTS. ONE IS WOULD YOUR HONOR FIND IT  
03:15:12 3 HELPFUL TO HAVE SUPPLEMENTAL BRIEFING ON THE HEARSAY ISSUE?

03:15:15 4 THE COURT: NO.

03:15:16 5 MR. TSITSUASHVILI: OKAY.

03:15:17 6 THE SECOND IS IF I -- ON THE OFF-CHANCE THAT I HAVE  
03:15:23 7 SUCCEEDED IN CONVINCING THE COURT THAT WE SHOULD NOT LOSE AS  
03:15:27 8 TO -- THAT WE SHOULD NOT LOSE AT SUMMARY JUDGEMENT AS TO  
03:15:33 9 COUNT 3, WOULD IT BE WORTHWHILE TO DISCUSS AT ALL THE  
03:15:35 10 CONSTITUTIONAL QUESTION, WHICH I WILL SAY UP FRONT, I THINK IF  
03:15:38 11 THE COURT SAYS THAT WE ARE GOING TO TRIAL ON COUNT 3, THE COURT  
03:15:42 12 NEED NOT DECIDE THAT -- THE QUESTION OF WHETHER WE CAN RELY ON  
03:15:48 13 A CONSTITUTIONAL VIOLATION TO FORM THE INDEPENDENTLY WRONGFUL  
03:15:51 14 ACT.

03:15:51 15 AND THE REASON FOR THE COURT TO NEED NOT DECIDE THAT IS  
03:15:56 16 BECAUSE THE GOVERNMENT HAS NOT SUGGESTED THAT WE CAN'T RELY ON  
03:15:59 17 SOME NON CONSTITUTIONAL BASIS TO MEET THAT INDEPENDENTLY  
03:16:02 18 WRONGFUL ACT. SO THAT'S ALL PROPERLY DONE AT THE POST-TRIAL  
03:16:06 19 STAGE WHERE WE CAN ARGUE OVER WHETHER WE HAVE MET  
03:16:09 20 CONSTITUTIONAL AND NON CONSTITUTIONAL VIOLATIONS THAT CAN FORM  
03:16:14 21 THE INDEPENDENTLY WRONGFUL ACT.

03:16:18 22 THE COURT: YOU KNOW, ASSUMING I STICK WITH MY  
03:16:21 23 TENTATIVE, YOU WILL HAVE PRESERVED YOUR ARGUMENT, I THINK  
03:16:26 24 WITH -- TO THE EXTENT THAT -- WELL WITH RESPECT TO THE FIRST  
03:16:30 25 AMENDMENT, AND THEN THAT CAN GO UP IF THAT'S WHAT HAPPENS.

03:16:37 1 MR. TSITSUASHVILI: SURE.

03:16:39 2 SO I WILL STOP.

03:16:40 3 THE COURT: OKAY.

03:16:41 4 ALL RIGHT.

03:16:42 5 MR. TSITSUASHVILI: THANK YOU.

03:16:43 6 THE COURT: THANK YOU BOTH FOR YOUR ARGUMENT AND I

03:16:44 7 WILL TRY AND GET AN ORDER OUT AS SOON AS I CAN.

03:16:46 8 MR. KEOUGH: THANK YOU, YOUR HONOR.

03:16:48 9 THE COURT: THANK YOU.

03:16:57 10 (THE PROCEEDINGS WERE CONCLUDED AT 3:16 P.M.)

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**CERTIFICATE OF REPORTER**

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE  
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO  
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE  
INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF  
PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



SUMMER A. FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

DATE: 5/21/25